

REMARKS

Claims 38-46, 48-49, 52 and 56-246 are pending in the present application.

Claims 38, 42, 46, 48, 52, 59 and 63 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 61 of co-pending Application No. 09/318,668.

Claims 39-41, 43-45, 47, 49-51, 53-58, 60-62 and 64-246 stand objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

For at least the reasons stated below, the Applicants submit that all pending claims are allowable.

Information Disclosure Statements

At § 4, the Office Action states that reference C592, submitted with the IDS filed 10/22/2008, has not been considered as to the merits because citation C592 fails to list the month and year of publication. The Applicants were unable to find month information in such reference, but nonetheless submitted such reference to the PTO out of an abundance of caution.

At § 5, the Office Action states that references C433, C440, C477, C478, C479, C528 and C576, submitted with the IDS filed 11/07/2007, have not been considered as to the merits because the citations for such references fail to list the month and year of publication.

Regarding reference C433, as discussed in a previous response, the Applicants do not have an English translation for such reference, which was submitted to the PTO out of an abundance of caution.

Regarding references C440, C477, C478, C479, C528 and C576, which were submitted on Nov. 7, 2007, the present response includes an IDS and form PTO/SB/08A that includes month and year information for references C477, C478, C479, C528 and C576. Also, though the Applicants have not found month information for reference C440, the Applicants believe that the 1987 year of such reference is sufficiently early to warrant consideration in accordance with MPEP § 609.04(a). The Applicants respectfully request consideration of such references.

Note that the above discussion is, by no means, to be construed as an admission by the

Applicants that any of such references are printed publications and/or constitute prior art to the present invention.

Obviousness-type Double Patenting Rejections

Claims 38, 42, 46, 48, 52, 59 and 63 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 61 of co-pending application no. 09/318,668. For at least the reasons stated below, the Applicants respectfully traverse the above rejections and submit that claims 38, 42, 46, 48, 52, 59 and 63 are allowable.

On Jan. 8, 2009, the Examiner and the Applicant's representative discussed various related applications (e.g., the present application, 09/318,668, 10/657,595, 10/657,785) and issued patents (5,940,771 and 7,457,646), along with the ongoing reexamination of U.S. Patent No. 6,374,311 (control no. 90/008,136). The Examiner requested that the Applicants submit terminal disclaimers for such sibling applications and the '771 and '646 patents, if not previously submitted. A terminal disclaimer for 5,940,771 has already been filed in the present application. Accordingly, terminal disclaimers for patent applications 09/318,668, 10/657,595 and 10/657,785, and issued patent 7,457,646 are submitted herewith. Though the Applicants submit that such terminal disclaimers are unnecessary, such terminal disclaimers are submitted herewith to expedite prosecution of the present application.

In particular, though the Applicants do not agree with the rejection of pending claims 38, 42, 46, 48, 52, 59 and 63 under the judicially created doctrine of obviousness-type double patenting over claim 61 of co-pending application 09/318,668, a terminal disclaimer in compliance with 37 C.F.R. 1.321(c) is submitted herewith, disclaiming the terminal part of this application that would extend beyond the expiration date of a patent that issues from commonly owned application no. 09/318,668, to obviate the double patenting rejection. The Applicants respectfully submit that the obvious-type double patenting rejection is thus overcome.

In view of the foregoing, it is respectfully submitted that the pending claims define allowable subject matter. The Applicants respectfully request that the present case pass to allowance. If anything remains to be done to place the present application in condition for allowance, the Examiner is kindly invited to contact the undersigned at the telephone number listed below.

Final Matters

The Office Action makes various statements regarding currently pending claims and claim 61 of application 09/318,668 that are now moot in view of the previous comments. Accordingly, the Applicants will not address such statements at the present time. The Applicants explicitly reserve the right to challenge such moot statements in the future should the need arise (*e.g.*, if any of such statements should reappear in a rejection of any claim in the future).

Summary

In summary, for at least the aforementioned reasons, the Applicants submit that all pending claims are in condition for allowance. Accordingly, the Applicants courteously solicit a Notice of Allowability with respect to all pending claims. To advance prosecution of the present application in an efficient manner, if the Examiner disagrees with the Applicants' positions stated above, or would like to discuss other aspects of the present application, the Applicants invite the Examiner to contact the Applicants' representative via telephone at the number below.

The Commissioner is hereby authorized to charge additional fees or credit overpayments to the deposit account of McAndrews, Held & Malloy, Account No. 13-0017.

Date: Feb. 19, 2009

Respectfully submitted,

/Shawn L. Peterson/

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